

REMARKS

The applicant respectfully requests reconsideration in view of the following remarks.

Support for amended claim 1 is based on former claims 1, 3 and 6 and on page 2, line 17 and page 2, line 6-9 of the English description. Support for newly added claims 19 and 20 is based on the original “use-claim 4” of the PCT publication (see page 2, line 32-34 of the English description) and on page 3, line 1-2 of the description.

Claims 1-3 and 5-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Heidenfelder et al. U.S. Patent No. 6,458,342 (“Heidenfelder”), in view of Martin et al. U.S. Publication No. 2002/0137795 A1 (“Martin”). The applicant respectfully traverses this rejection.

An object of the present invention was to provide UV-A filter of formula I in a form with which undesired crystallizing out of this compound is prevented (see page 1, lines 32-33 of the specification). UV-A-filter of formula I (Uvinul[®] A Plus) is a crystalline solid with a melting point of 57°C. Therefore, melts of Uvinul[®] A Plus, which are usually filled into containers at the end of the production of Uvinul[®] A Plus, regularly crystallize out in the containers during storage at a temperature below the melting point, in particular at room temperature (23°C).

The above mentioned object of the present invention was achieved through the provision of a mixture as described in claim 1, in which Uvinul[®] A Plus does not crystallize out due to the composition of the mixture.

The mixture of Example 1 of the present invention was a clear liquid, which did not show any sign of crystallization after storing for 12 months at room temperature (23°C). The mixture remained a clear liquid.

The Examiner stated that Heidenfelder discloses all aspects of the instant invention except for specifically stating formula I and II absorb in the UV-A and UV-B range. The Examiner argued that Martin teaches this feature.

Heidenfelder discloses cosmetic and pharmaceutical preparations which have 0.1 to 40% by weight preferably 1 to 25% by weight (col. 8. line 13) of the total amount of the cosmetic and pharmaceutical preparation of a sun screen combination comprising the UV-A filter 2,2'-p-phenylenebis(3,1-benzoxazin-4-one) and further compounds absorbing in the UV-A region, in the UV-B region and in both regions. Heidenfelder discloses as further compounds amongst others UV-A filter of formula I and UV-B filter of formula II. Heidenfelder discloses 17 different possibilities for compound B. The applicant claims that the mixture consists of 30 to 50% by weight of the UV-A filter of the formula I and 70 to 50% by weight of the UV-B filter of the formula II. Heidenfelder does not disclose that UV-A filter is present in an amount less than and up to the same amount as UV-B filter. The applicant's claimed invention requires that UV-A filter is present in an amount less than and up to the same amount as UV-B filter.

The minimum amount of mixture UV-A and UV-B filter claimed is 80% by weight. Heidenfelder does not disclose any preparation comprising UV filters in an amount of at least 80% by weight of the total preparation.

Martin teaches that the filter of formula II of the present invention is a UV-B filter. Martin does not appear to mention Uvinul[®] A Plus.

Neither Heidenfelder nor Martin suggests how to prevent the crystallizing out of Uvinul[®] A Plus. There is also no hint directed to the inventive mixtures in liquid form consisting of UV-A filter of formula I and UV-B filter of formula II in a total amount of at least 80% by weight of the total mixture wherein said mixture shows no crystallizing out of Uvinul[®] A Plus. The inventive mixture itself can not be considered to be a cosmetic preparation as described by Heidenfeld or Martin because the amount of UV-filter compounds is much too high. Therefore claim 1 and all dependent claims are patentable with respect to Heidenfelder and/or Martin. For the above reasons, this rejection should be withdrawn.

In view of the above amendment, applicant believes the pending application is in condition for allowance.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 12810-00180-US from which the undersigned is authorized to draw.

Dated: July 1, 2008

Respectfully submitted,

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